



**DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS**



In the matter of: )  
)  
) ADP Case No. 17-00185  
)  
Applicant for Public Trust Position )

**Appearances**

For Government: Ray T. Blank Jr., Esq., Department Counsel  
For Applicant: *Pro se*

11/30/2017

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**Decision**

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BENSON, Pamela, C., Administrative Judge:

Applicant failed to mitigate the financial considerations trustworthiness concerns. Eligibility for access to sensitive information is denied.

**Statement of the Case**

Applicant submitted an Electronic Questionnaires for Investigations Processing (e-QIP) on July 21, 2016. On March 1, 2017, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued a Statement of Reasons (SOR) detailing trustworthiness concerns under Guideline F, Financial Considerations. The action was taken under DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the DoD on September 1, 2006. On June 8, 2017, new AG were implemented and are effective for decisions issued on or after that date.<sup>1</sup>

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<sup>1</sup> I considered the previous AG, effective September 1, 2006, as well as the new AG, effective June 8, 2017. My decision would be the same if the case was considered under the previous AG.

Applicant answered the SOR on March 29, 2017, and elected to have his case decided on the written record in lieu of a hearing. On April 27, 2017, Department Counsel submitted the Government's file of relevant material (FORM). Applicant received it on May 5, 2017. The Government's evidence is identified as Items 1 through 8. He was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of receipt of the FORM. Applicant did not provide a response to the FORM, object to the Government's evidence, or submit documents. The case was assigned to me on September 26, 2017.

### **Findings of Fact**

Applicant admitted each of the allegations in his Answer to the SOR. He claimed that he had previously disputed the debts alleged in SOR ¶¶ 1.b through 1.f,<sup>2</sup> but as of March 2017, they were paid in full. After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact.

Applicant is 52 years old. He married in 1991 and was divorced in 2010. He has not remarried. He has a 30 year-old son, and he also has two daughters, 12 and 10 years of age. He received his high school diploma in June 1983. He has been self-employed as a software engineer and has worked for a federal contractor since April 2016. Prior to his current employment, he was self-employed as a software engineer with another company from September 2014 to March 2016. He left this employment after the company eliminated his position. He was also self-employed from April 1997 through September 2014. Applicant has been employed steadily since April 1997.<sup>3</sup>

The delinquent debts alleged in the SOR are supported by credit reports from July 2016 and April 2017. Applicant admitted that he owes the delinquent debts alleged in SOR ¶¶ 1.a through 1.f (ranging from \$25,160 to \$56; totaling \$26,094), but claimed that the debts cited in SOR ¶¶ 1.b through 1.f to have been recently paid. He attached documentation with his SOR Answer to substantiate his claim.<sup>4</sup>

One SOR debt (SOR ¶¶ 1.a/\$25,160) remains unpaid. The debt relates to an airplane he purchased in 2006 for \$72,000 that was later voluntarily repossessed by the bank following his divorce. He listed the debt to be approximately \$20,000, and claimed to be arranging payments with the creditor. He admitted in his SOR Answer that he had not yet made payment arrangements with this creditor. The creditor offered to settle the account for \$12,000, but he believed that settlement offer was too high. He is trying to get this creditor to reduce the amount of the delinquent debt before he settles this debt.<sup>5</sup>

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<sup>2</sup> Note that the SOR skipped over allegation 1.e. There are five SOR allegations from 1.a. through 1.f.

<sup>3</sup> Item 4.

<sup>4</sup> Item 1, 2.

<sup>5</sup> Item 1, 2, 4, 6.

Applicant provided documentation with his SOR Answer to show that he paid the four smallest debts cited in the SOR. (SOR ¶¶ 1.b through 1.f totaling \$934.) During his background interview in August 2016, the DoD authorized investigator confronted Applicant with details of these four delinquent accounts, noting that three of the accounts were with the same collection agency. Applicant claimed to have been unaware of these accounts and stated he would look into the matter and resolve it once he determined the identity of the accounts. In his Answer, however, Applicant listed that he disputed all four accounts, two accounts in 2011, one in 2012, and the last one in 2015. He paid all four of these accounts on the same date he completed his SOR Answer.<sup>6</sup>

I have inferred from Applicant's SOR Answer that his financial problems stem from a 2010 divorce. The loss of his wife's income in addition to Applicant becoming solely responsible for several accounts caused him to suffer temporary financial hardship in 2010. There is no evidence that he participated in any type of financial counseling. There is also no evidence to indicate that Applicant sought debt consolidation.<sup>7</sup>

### **Policies**

Positions designated as ADP I and ADP II are classified as "sensitive positions." The Deputy Under Secretary of Defense (Counterintelligence and Security) Memorandum, dated November 19, 2004, indicates trustworthiness adjudications will apply to cases forwarded to Defense Office of Hearings and Appeals by the Defense Security Service and Office of Personnel Management. Department of Defense contractor personnel are afforded the right to the procedures contained in the Directive before any final unfavorable access determination may be made.

When evaluating an applicant's suitability for a public trust position, the administrative judge must consider the disqualifying and mitigating conditions in the AG. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(c), the entire process is a conscientious scrutiny of a number of variables known as the "whole-person concept." The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for access to national security eligibility will be resolved in favor of the national security."

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<sup>6</sup> Item 2, 4, 5, 7.

<sup>7</sup> Item 2.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the applicant is responsible for presenting “witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel.” The applicant has the ultimate burden of persuasion to obtain a favorable trustworthiness decision.

A person who seeks access to sensitive information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The government reposes a high degree of trust and confidence in individuals to whom it grants access to sensitive information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard sensitive information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of sensitive information.

## **Analysis**

### **Guideline F, Financial Considerations**

The trustworthiness concern relating to the guideline for financial considerations is set out in AG ¶ 18:

Failure to live within one’s means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual’s reliability, trustworthiness, and ability to protect classified or sensitive information. Financial distress can also be caused or exacerbated by, and thus can be a possible indicator of, other issues of personnel security concern such as excessive gambling mental health conditions, substance misuse, or alcohol abuse or dependence. An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds.

This concern is broader than the possibility that an individual might knowingly compromise sensitive information in order to raise money. It encompasses concerns about an individual’s self-control, judgment, and other qualities essential to protecting sensitive information. An individual who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding sensitive information.<sup>8</sup>

AG ¶ 19 provides conditions that could raise trustworthiness concerns. The following are potentially applicable:

(a) inability to satisfy debts; and

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<sup>8</sup> See ISCR Case No. 11-05365 at 3 (App.Bd. May 1, 2012).

(c) a history of not meeting financial obligations.

Applicant experienced financial difficulty beginning in at least 2010 after a divorce. He experienced loss of his spouse's income and he became solely responsible for several debts, to include the payments on an airplane that he purchased in 2006 for \$72,000. The purchase of the airplane is related to the largest and most significant delinquent debt alleged in the SOR, which is unresolved. There is sufficient evidence to support the application of the above disqualifying conditions.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. The following mitigating conditions under AG ¶ 20 are potentially applicable:

(a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;

(b) the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;

(c) the individual has received or is receiving financial counseling for the problem from a legitimate and credible source, such as a non-profit credit counseling service, and there are clear indications that the problem is being resolved or is under control; and

(d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant began experiencing financial problems following his divorce in 2010. His largest debt remains unresolved. He has not provided proof that he has successfully disputed or resolved this debt despite that his delinquent account existed for several years. His financial issues are ongoing. AG ¶ 20(a) does not apply.

The 2010 divorce, which resulted in the loss of income for Applicant, was a situation beyond his control. For the full application of AG ¶ 20(b), Applicant must show that he has acted responsibly under the circumstances. Applicant acknowledged on his e-QIP and in his SOR Answer that all of the debts cited in the SOR were his responsibility. He paid the four smallest debts on the same date he provided his Answer to the SOR. Insufficient evidence was provided to show he has paid or resolved the largest debt. AG ¶ 20(b) partially applies.

There is no evidence that Applicant has enrolled in a credit counseling service or undertaken financial counseling. There is insufficient evidence to show that he has made a good-faith effort to repay overdue creditors, or otherwise resolve his largest delinquent debt. Applicant had several years to resolve the four debts only paid by him until after he received the SOR. This does not demonstrate that he made a good-faith effort to pay these debts. Nor did he provide information to support his original dispute of the legitimacy of these debts. Insufficient evidence was provided to apply AG ¶¶ 20(c) and 20(d).

### **Whole-Person Concept**

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a public trust position by considering the totality of the applicant's conduct and all the circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(d):

(1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a public trust position must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I have incorporated my comments under Guideline F in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under that guideline, but some warrant additional comment.

Applicant is 52 years old and had financial setbacks beginning in approximately 2010 following his divorce. He has been aware that his finances were a concern since he completed his e-QIP in 2016. He has been continuously employed since April 1997. Applicant admitted that he had disputed all of the debts cited in the SOR. He only paid the four smallest debts after he received his SOR. He began disputing some of his debts in 2011. Applicant listed in his SOR Answer that his divorce resulted in temporary financial hardship in 2010. He had several years to make payment arrangements or to successfully dispute and resolve his debts. In addition, it is clear that he was finally motivated to pay his four smallest debts only after receiving the SOR. According to the most recent credit report, his largest debt of \$25,160 is still unresolved.

Under the whole-person analysis, Applicant has not demonstrated a meaningful track record of debt repayment or a realistic plan of debt resolution concerning his most significant debt. Therefore, he failed to provide sufficient evidence to mitigate the trustworthiness concerns. Although, I am sympathetic to his 2010 divorce and loss of income, Applicant failed to show he is responsibly managing his finances. The record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a public trust position. For all these reasons, I conclude Applicant failed to mitigate the trustworthiness concerns arising under Guideline F, financial considerations.

### **Formal Findings**

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	AGAINST APPLICANT
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Subparagraphs 1.a-1.f:	Against Applicant
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### **Conclusion**

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with national security to grant Applicant eligibility for a public trust position. Eligibility for access to sensitive information is denied.

Pamela C. Benson  
Administrative Judge